

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

**Item #36
ID #11496
RESOLUTION E-4520
September 27, 2012**

REDACTED

R E S O L U T I O N

Resolution E-4520. Pacific Gas and Electric Company requests approval of agreements for the procurement of renewable energy credits, also referred to as green attributes, with Barclays Bank PLC, Sierra Pacific Industries, and TransAlta Corporation.

PROPOSED OUTCOME: This Resolution denies cost recovery for Pacific Gas and Electric Company's agreements for renewable energy credits, also referred to as green attributes, with Barclays Bank PLC, Sierra Pacific Industries, and TransAlta Corporation.

ESTIMATED COST: None.

By Advice Letters (AL) 3600-E filed on January 26, 2010 (as supplemented by AL 3600-E-A filed on October 20, 2010 and by AL 3600-E-B filed on February 9, 2011), AL 3632-E filed on March 12, 2010 (as supplemented by AL 3632-E-A filed on October 29, 2010 and AL 3632-E-B filed on February 9, 2011), AL 3854-E filed on June 2, 2011 and AL 3862-E filed on June 16, 2011.

SUMMARY

Pacific Gas and Electric Company's (PG&E) agreements for the purchase of renewable energy credits (RECs), also referred to as green attributes, from Barclays Bank PLC, Sierra Pacific Industries, and Transalta Corporation (the REC Agreements) are denied.

Pursuant to its obligations under California's renewables portfolio standard (RPS) at the time these REC Agreements were executed, PG&E was required to procure 20% of its retail sales from eligible renewable resources by December 31,

2010, subject to various compliance rules. In an effort to meet this compliance obligation, PG&E executed the following REC Agreements in 2009.

PG&E filed Advice Letter (AL) 3600-E on January 6, 2010, as modified by AL 3600-E-A on October 20, 2010 and AL 3600-E-B on February 9, 2011, requesting the California Public Utilities Commission's (Commission) approval of the purchase and transfer of RECs from Barclays Bank PLC's (Barclays) associated with renewable generation from the existing 100 megawatt (MW) Hay Canyon wind facility in Oregon. PG&E executed this agreement with Barclays through bilateral negotiations. Pursuant to the terms of the agreement, PG&E would pay for and accept deliveries of 250 gigawatt-hours (GWh) per year of energy from Barclays in 2010 and 2011, pursuant to existing authority for PG&E to acquire short-term energy deliveries. PG&E would then pay for and receive the RECs associated with these energy deliveries (250,000 RECs¹ per year) only upon Commission approval of this agreement.

PG&E filed Advice Letter AL 3632-E on March 12, 2010, as modified by AL 3632-E-A on October 29, 2010 and AL 3632-E-B on February 9, 2011, requesting Commission approval of the purchase and transfer of RECs from Barclays associated with renewable generation from the existing 32 MW Nine Canyon Wind Phase III facility in Washington State. PG&E executed this agreement with Barclays through bilateral negotiations. Pursuant to the terms of the agreement, PG&E would pay for and accept deliveries of 33 GWh per year of energy from Barclays in 2010 and 2011, pursuant to existing authority for PG&E to acquire short-term energy deliveries. PG&E would then pay for and accept the RECs associated with these energy deliveries (33,000 RECs per year) only upon Commission approval of this agreement.

PG&E contends that its 2006 Conformed Long-Term Procurement Plan (LTPP) provided authorization for it to procure the energy associated with the Barclays' REC transactions without prior Commission Approval of the transaction. This resolution does not address this issue, nor does it prejudge whether or not PG&E may successfully seek cost recovery for these energy deliveries pursuant to the authorization cited.

¹ One REC represents the renewable attributes associated with one MWh of eligible renewable generation.

PG&E filed Advice Letter AL 3854-E on June 2, 2011 requesting Commission approval to purchase RECs from four existing biomass facilities in California owned by Sierra Pacific Industries (SPI): SPI Anderson, SPI Lincoln, SPI Quincy, and SPI Burney (the SPI Facilities).² The SPI Facilities are sawmills that generate electricity by combusting wood waste products on-site. Under the terms of the agreement, PG&E would purchase the RECs associated with this energy that SPI consumes on-site. PG&E executed this agreement with SPI through bilateral negotiations. Under the terms of the agreement, SPI would transfer the RECs associated with the energy that its facilities consume on-site to PG&E upon CPUC Approval. The agreement would require SPI to transfer to PG&E the RECs associated with 100 GWh per year of generation (100,000 RECs) from 2011 through 2015.

PG&E filed Advice Letter AL 3862-E on June 16, 2011 requesting Commission approval to purchase RECs from TransAlta Corporation (TransAlta). Under the contract, PG&E would receive RECs from TransAlta's newly developed 66 MW Summerview #2 wind facility located in Alberta, Canada. PG&E executed this agreement with TransAlta through bilateral negotiations. The agreement would obligate TransAlta to transfer the RECs associated with 175-210 GWh per year of renewable generation (175,000 to 210,000 RECs) to PG&E from 2011 through 2014.

The agreements with Barclays, SPI, and TransAlta (the "REC Agreements") qualify as REC-only contracts as defined by Decision (D.) 10-03-021, as modified by D.11-01-025, based on the delivery structures proposed by PG&E. This resolution denies the REC Agreements because PG&E has not demonstrated an immediate near-term need for these RECs to meet its 33% RPS compliance obligations under SB 2 (1X), nor has it demonstrated a need for these RECs to meet its pre-2011 20% RPS compliance obligations.

BACKGROUND

Overview of the Renewables Portfolio Standard (RPS) Program

² PG&E currently purchases bundled excess energy (which includes the associated RECs) from these four SPI Facilities through existing Qualifying Facility (QF) agreements. These existing QF Agreements have no impact on the REC transactions under discussion in this resolution, as the RECs at issue here would be generated by the energy currently consumed on-site by these four facilities.

The California RPS Program was established by Senate Bill (SB) 1078, and has been subsequently modified by SB 107, SB 1036 and SB 2 (1X).³ The RPS program is codified in Public Utilities Code Sections 399.11-399.31.⁴ Under SB 2 (1X), the RPS program administered by the Commission requires each retail seller to increase its total procurement of eligible renewable energy resources so that 33 percent of retail sales are served by eligible renewable energy resources no later than December 31, 2020.

Additional background information about the Commission's RPS Program, including links to relevant laws and Commission decisions, is available at <http://www.cpuc.ca.gov/PUC/energy/Renewables/overview.htm> and <http://www.cpuc.ca.gov/PUC/energy/Renewables/decisions.htm>.

NOTICE

Notice of Advice Letters 3600-E, 3600-E-A, 3600-E-B, 3632-E, 3632-E-A, 3632-E-B, 3854-E, and 3862-E was made by publication in the Commission's Daily Calendar. Pacific Gas and Electric Company states that a copy of each Advice Letter was mailed and distributed in accordance with Section 3.14 of General Order 96-B.

PROTESTS

PG&E's AL 3600-E was timely protested by the Division of Ratepayer Advocates (DRA) on February 16, 2010. PG&E responded to DRA on February 23, 2010. PG&E's AL 3600-E-A was also protested by DRA on November 9, 2010. PG&E responded to DRA on November 16, 2010. Lastly, PG&E's AL 3632-E was timely protested on March 30, 2010 by DRA. PG&E responded to DRA on April 8, 2010.

Advice Letter 3600-E

DRA's protest to AL 3600-E focused on three primary areas of concern: (1) the perceived allocation of risk borne by ratepayers through this agreement, (2)

³ SB 1078 (Sher, Chapter 516, Statutes of 2002); SB 107 (Simitian, Chapter 464, Statutes of 2006); SB 1036 (Perata, Chapter 685, Statutes of 2007); SB 2 (1X) (Simitian, Chapter 1, Statutes of 2011, First Extraordinary Session).

⁴ All further references to sections refer to Public Utilities Code unless otherwise specified.

inadequate safeguards to assure project performance, and (3) that deliveries from the agreement are inconsistent with PG&E's demonstrated need for renewable generation.

PG&E responded to DRA's protest by arguing that this agreement presents a low-risk to ratepayers because deliveries would come from an existing, online project backed by a developer with significant assets. PG&E also contends that performance assurances are unnecessary because this agreement concerns deliveries from an existing project. Additionally, PG&E responded that deliveries from this agreement would help it meet its renewable net short position at the time this agreement was signed.

Advice Letter 3600-E-A

DRA's protest to AL 3600-E-A focused primarily on PG&E's acceptance of energy deliveries pursuant to this agreement prior to CPUC approval of this advice letter.

PG&E responded that it was authorized at the time through its CPUC-approved 2006 Conformed Long-Term Procurement Plan to make "short-term and bilateral forward energy purchases through bilateral transactions." PG&E contends that, in this case, it was authorized to purchase the energy at an indexed price and that it would true up with Barclays for the green attributes and the full contract price only after CPUC approval.

Advice Letter 3632-E

DRA's protest to AL 3632-E addressed the timing of PG&E's filing of that Advice Letter. PG&E filed AL 3632-E on March 12, 2010, a matter of days before the Commission issued Decision (D.) 10-03-021 on March 16, 2010 to establish rules for the use of RECs for RPS compliance purposes. DRA contends in its protest that AL 3632-E should have been re-filed to demonstrate consistency with D.10-03-021.

PG&E opposed DRA's protest on the grounds that the Commission could require the utility to file a supplemental advice letter demonstrating compliance with D.10-03-021 if it deemed necessary. For this reason, PG&E does not believe the issuance of the RECs Decision should impact AL 3632-E.

The Commission rejects these protests from DRA.

The Commission does not agree with DRA that the allocation of risk to ratepayers or the adequacy of safeguards to ensure project performance are sufficient grounds for denial of AL 3600-E. Furthermore, the Commission has evaluated PG&E's current need for these short-term RECs in light of changed policies in California since 2010. Given this context, DRA's protest addressing PG&E's portfolio need in 2010 is no longer on point.

The Commission also denies DRA's claim that PG&E lacked the authority to accept pre-deliveries of energy pursuant to the Barclays' Agreements, and that PG&E erred in filing the Barclays' Agreement before the Commission issued D.10-03-021. On the former, PG&E contends that it was authorized to accept these energy deliveries pursuant to its authority under the 2006 Conformed Long-Term Procurement Plan. This resolution does not address this issue, nor does it prejudice whether PG&E may appropriately seek cost recovery for these energy deliveries. As such, this protest is moot as it has no impact on the merits of the REC transaction under consideration by this resolution. On the latter protest, DRA's protest is rendered irrelevant by PG&E's subsequent submission of Supplemental AL 3600-E-A and Supplemental AL 3632-E-A to conform both agreements to D.10-03-021.

DRA's protests, based on various grounds, seeking rejection of PG&E's REC Agreements with Barclays are denied.

No protests were filed to PG&E's AL 3600-E-B, AL 3632-E-A, AL 3632-E-B, AL 3854-E, or AL 3862-E.

DISCUSSION

PG&E requests Commission approval of new agreements with Barclays, SPI, and TransAlta for the purchase of renewable energy credits (RECs), also known as green attributes.

Pursuant to its obligations under California's RPS at the time these REC Agreements were executed, PG&E was required to procure 20% of its retail sales from eligible renewable resources by December 31, 2010, subject to various compliance rules.⁵ Retail sellers were permitted to defer an annual compliance

⁵ See, SB 107 (Simitan, 2006) and D.06-10-050.

deficit for up to three years if certain conditions were met and all compliance deficits needed to be satisfied with actual procurement within the three year time period. In an effort to meet this compliance obligation, PG&E executed the following REC Agreements in 2009.

PG&E filed Advice Letter (AL) 3600-E on January 6, 2010, as modified by AL 3600-E-A on October 20, 2010 and AL 3600-E-B on February 9, 2011, requesting the California Public Utilities Commission's (Commission) approval of the purchase and transfer of RECs from Barclays Bank PLC's (Barclays) associated with renewable generation from the existing 100 megawatt (MW) Hay Canyon wind facility in Oregon. PG&E executed this agreement with Barclays through bilateral negotiations. Pursuant to the terms of the agreement, PG&E would pay for and accept deliveries of 250 gigawatt-hours (GWh) per year of energy from Barclays in 2010 and 2011, pursuant to existing authority for PG&E to acquire short-term energy deliveries. PG&E would then pay for and receive the RECs associated with these energy deliveries (250,000 RECs⁶ per year) only upon Commission approval of this agreement.

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PG&E contends that its 2006 Conformed Long-Term Procurement Plan (LTPP) provided authorization for it to procure the energy associated with the Barclays' REC transactions without prior Commission Approval of the transaction. This resolution does not address this issue, nor does it prejudge whether or not PG&E

⁶ One REC represents the renewable attributes associated with one MWh of eligible renewable generation.

may successfully seek cost recovery for these energy deliveries pursuant to the authorization cited.

PG&E filed Advice Letter AL 3854-E on June 2, 2011 requesting Commission approval to purchase RECs from four existing biomass facilities in California owned by Sierra Pacific Industries (SPI): SPI Anderson, SPI Lincoln, SPI Quincy, and SPI Burney (the SPI Facilities). The SPI Facilities are sawmills that generate electricity by combusting wood waste products on-site. Under the terms of the agreement, PG&E would purchase the RECs associated with this energy that SPI consumes on-site. PG&E executed this agreement with SPI through bilateral negotiations. Under the terms of the agreement, SPI would transfer the RECs associated with the energy that its facilities consume on-site to PG&E upon CPUC Approval. The agreement would require SPI to transfer to PG&E the RECs associated with 100 GWh per year of generation (100,000 RECs) from 2011 through 2015.

PG&E filed Advice Letter AL 3862-E on June 16, 2011 requesting Commission approval to purchase RECs from TransAlta Corporation (TransAlta). Under the contract, PG&E would receive RECs from TransAlta's newly developed 66 MW Summerview #2 wind facility located in Alberta, Canada. PG&E executed this agreement with TransAlta through bilateral negotiations. The agreement would obligate TransAlta to transfer the RECs associated with 175-210 GWh per year of renewable generation (175,000 to 210,000 RECs) to PG&E from 2011 through 2014.

PG&E contends that its 2006 Conformed Long-Term Procurement Plan provided authorization for it to procure the energy associated with the Barclays' REC transactions prior to CPUC Approval of the transaction. This resolution does not address whether PG&E was authorized to accept pre-deliveries of energy pursuant to these agreements, nor does it prejudge whether or not PG&E may successfully seek cost recovery for these energy deliveries pursuant to other Commission orders.

Table 1 below summarizes the project-specific features of these agreements:

Table 1. Summary of PG&E's REC Agreements

Counter-Party	Generating Facilities	Resource Type	Annual REC Procurement	Contract Term⁷	Expected Compliance Period⁸	Project Location
Barclays Bank PLC	Hay Canyon	Wind	250,000	2010-2011	Pre-2011 and CP1	Moro, Oregon
Barclays Bank PLC	Nine Canyon	Wind	~33,000	2010-2011	Pre-2011 and CP1	Kennewick, Washington
Sierra Pacific Industries	Anderson, Lincoln, Quincy, Burney	Biomass	100,000	2011-2015	CP1-CP2	Various Locations, California
TransAlta Corporation	Summerview #2	Wind	175,000-210,000	2011-2014	CP1-CP2	Alberta, Canada

PG&E requested that the Commission issue a resolution for each filed Advice Letter that contains the following findings:

1. Approves the Agreements in their entirety, including payments to be made by PG&E pursuant to the Agreements, subject to the Commission's review of PG&E's administration of the Agreements.
2. Finds that any procurement pursuant to the Agreements is procurement from an eligible renewable energy resource for purposes of determining PG&E's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.) ("RPS") Decision ("D.") 03-06-071 and D.06-10-050, or other applicable law.

⁷ This represents the term of years during which the renewable generation with which these RECs are associated would be generated pursuant to each agreement.

⁸ D.11-12-020 established three multi-year compliance periods (CP) as directed by SB 2 (1X) (CP1: 2011-13, CP2: 2014-16, CP3: 2017-20).

3. Finds that all procurement and administrative costs, as provided by Public Utilities Code section 399.14(g), associated with the Agreements shall be recovered in rates.
4. Finds that pursuant to Public Utilities Code Section 399.16(d), as enacted by the California Renewable Energy Resources Act, Senate Bill X1 2 ("SBX1 2"), the Agreements shall count in full towards RPS procurement requirements, and thus are not subject to procurement or compliance limitations and restrictions, including those set forth in or developed pursuant to Sections 399.13(a)(4)(B) or 399.16(c), as enacted by SBX1 2.
5. Adopts the following finding of fact and conclusion of law in support of CPUC Approval:
 - a. The Barclays' Agreements are consistent with PG&E's 2009 RPS procurement plan.
 - b. The Agreements with Sierra Pacific Industries and with TransAlta Corporation are consistent with PG&E's 2011 RPS procurement plan.
 - c. The terms of the Barclays' Agreements, including the price of delivered energy, are reasonable.
 - d. The terms of the Sierra Pacific Industries and TransAlta Corporation Agreements, including the price of delivered TRECs, are reasonable.
6. Adopts the following finding of fact and conclusion of law in support of cost recovery for the Agreements:
 - a. The utility's costs under these Agreements shall be recovered through PG&E's Energy Resource Recovery Account.
 - b. Any stranded costs that may arise from these Agreements are subject to the provisions of D.04-12-048 that authorize recovery of stranded renewables procurement costs over the life of the contract. The implementation of the D.04-12-048 stranded cost recovery mechanism is addressed in D.08-09-012.
7. Adopts the following finding with respect to resource compliance with the Emissions Performance Standard (EPS) adopted in R.06-04-009:

- a. The Barclays' Agreements are not long-term financial commitments subject to the EPS under Public Utilities Code section 8340(j) because its contract terms are less than five years.
- b. The Sierra Pacific Industries and TransAlta Corporation PSAs are not covered procurement subject to the EPS because they do not involve procurement of electric energy.

Energy Division Evaluated the REC Agreements on the Following Grounds:

- Consistency with Bilateral Contracting Rules
- Consistency with PG&E's Least-Cost, Best-Fit Requirements
- Demonstration of Need for the REC Agreements

Consistency with Bilateral Contracting Rules

PG&E negotiated each of these REC Agreements on a bilateral basis. PG&E entered into bilateral negotiations given its view at the time that the REC Agreements had favorable prices and terms. PG&E believed that delaying procurement of these RECs until its next competitive solicitation could result in the utility failing to attain its 20% RPS procurement obligations.

The Commission developed guidelines pursuant to which utilities may enter into bilateral RPS contracts. In D.03-06-071, the Commission authorized entry into bilateral RPS contracts provided that such contracts did not require Public Goods Charge funds and that they were "prudent." In D.06-10-019, the Commission established additional rules pursuant to which the IOUs could enter into bilateral RPS contracts. PG&E adhered to these bilateral contracting rules because the REC Agreements are for longer than one month in duration, the REC Agreements were filed by advice letter, and the above market costs will not be applied to PG&E's RPS cost limitation and the REC Agreements are reasonably priced.

In D.09-06-050, the Commission also determined that bilateral agreements should be reviewed according to the same processes and standards as projects that come through a solicitation. Accordingly, PG&E attests that each of these REC Agreements was compared to other similar offers received by PG&E from its 2009 RPS RFO; the proposed REC Agreements were reviewed by PG&E's

Procurement Review Group; and an independent evaluator oversaw the negotiation of these REC Agreements.

The REC Agreements are consistent with the bilateral contracting guidelines established in D.06-10-019 and D.09-06-050.

Consistency with PG&E's Least-Cost Best-Fit (LCBF) Requirements

The LCBF decision directs the utilities to use certain criteria in their bid ranking.⁹ The decision offers guidance regarding the process by which the utility ranks bids in order to select or “shortlist” the bids with which it will commence negotiations. PG&E's bid evaluation includes a quantitative and qualitative analysis, as well as each proposal's absolute value to PG&E's customers and relative value in comparison to other proposals.

The basic components of PG&E's LCBF evaluation and selection criteria and process for RPS contracts were established in the Commission's LCBF Decisions D.03-06-071 and D.04-07-029. Consistent with these decisions, the three main steps undertaken by PG&E are: (1) initial data gathering and verification; (2) a quantitative assessment of proposals, and; (3) adjustments to selection based on proposals' qualitative attributes. PG&E applied these criteria to the proposals received in the 2009 solicitation in order to establish a short-list of proposals from bidders with whom PG&E would engage in contract discussions. PG&E's 2009 RPS solicitation was the most recent solicitation at the time that each of these REC agreements was negotiated and executed.

PG&E examined the reasonableness of each one of the REC Agreements using the same LCBF evaluation methodology that it used for RPS offers received for the 2009 RPS solicitation. Although the REC Agreements were negotiated bilaterally, PG&E determined that the agreements were reasonable and compared favorably to proposals that PG&E received in its 2009 solicitation and to other bilateral offers negotiated around the same time.

The Commission finds that PG&E adequately examined the reasonableness of the REC Agreements utilizing its LCBF methodology during the time the agreements were being negotiated and executed.

⁹ See D.04-07-029

Demonstration of Need for the REC Agreements

The California RPS Program was established by Senate Bill (SB) 1078 and has been recently modified by SB 2 (1X), which became effective on December 10, 2011. SB 2 (1X) made significant changes to the RPS Program.¹⁰ SB2 (1X) established new RPS procurement targets such that retail sellers must procure "...from January 1, 2011 to December 31, 2013...an average of 20 percent of retail sales...25 percent of retail sales by December 31, 2016, and 33 percent of retail sales by December 31, 2020."¹¹

The rules for counting RECs for RPS compliance have changed since the time that PG&E executed these REC Agreements. Table 2 summarizes the application of these rules dependent on the timing of the individual REC Agreements:

¹⁰ The Commission opened Rulemaking (R.) 11-05-005 (May 5, 2011) to implement the new RPS law.

¹¹ See § 399.15(b)(2)(B), SB 2 (1X)

Table 2. Summary of Application of Commission Rules to REC Agreements

REC Agreement <u>Executed</u> before June 1, 2010?	Energy associated with the RECs <u>Generated</u> prior to Jan. 1, 2011?	Controlling Commission Decisions (D.)	Restrictions on Application of RECs Against RPS Compliance Obligations:
Yes	Yes	D.10-03-021, as modified by D.11-01-025, ("the REC Decision").	RECs will be retired in WREGIS and accounted for in the Closing Report process established in D.12-06-038. RECs will count towards pre-2011 RPS compliance obligations.
Yes	No	D.11-12-052 ("the Product Content Category Decision") and D.12-06-038 ("the Compliance Decision").	RECs will "count in full" towards RPS compliance. RECs must be retired in WREGIS for RPS compliance purposes within 36 months from when they are generated.
No	No	D.11-12-052 ("the Product Content Category Decision") and D.12-06-038 ("the Compliance Decision").	RECs will be classified according to the portfolio content categories. RECs must be retired in WREGIS for RPS compliance purposes within 36 months from when they are generated.

Each of the REC Agreements considered in this resolution was executed before June 1, 2010. Approximately half of the RECs included in the Barclays' Agreements are associated with energy generated prior to January 1, 2011 and would count towards PG&E's pre-2011 RPS compliance obligations, consistent with D.12-06-038. As explained in D.12-06-038, each utility must apply all RECs associated with generation prior to 2011 against these pre-2011 RPS compliance obligations.

Also pursuant to D.12-06-038, the Commission will waive a utility's pre-2011 RPS compliance deficit so long as the utility attained 14% RPS procurement in 2010. In its Provisional Closing Report for the California Renewables Portfolio Standard 20% Program filed on August 20, 2012, PG&E demonstrated that it attained the 14% safe harbor, and thus its obligation to procure additional

renewable energy for pre-2011 compliance purposes will be waived.¹² As such, the RECs associated with pre-2011 generation that are considered in this resolution provide no value to PG&E ratepayers.

For these reasons, the Commission finds that PG&E does not have a need to procure RECs associated with pre-2011 generation.

The remaining RECs procured pursuant to the Barclays Agreements, in addition to the RECs procured pursuant to the SPI and TransAlta Agreements, would be associated with energy generated after January 1, 2011 and thus could “count in full” toward PG&E’s RPS compliance obligations. These remaining RECs would be generated between January 1, 2011 and 2015 (i.e., within the first and second compliance periods).

In light of recent information¹³ provided to the Commission about PG&E’s current risk-adjusted net short position relative to its current RPS targets, the details of which are contained in Confidential Appendix A, the Commission finds that the near-term nature of these REC Agreements is inconsistent with PG&E’s demonstrated compliance need through the first and second compliance periods.

Confidential Information

The Commission, in implementing Pub. Util. Code § 454.5(g), has determined in D.06-06-066, as modified by D.07-05-032, that certain material submitted to the Commission as confidential should be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations. D.06-06-066 adopted a time limit on the confidentiality of specific terms in RPS contracts. Such information, such as price, is confidential for three years from the date the contract states that energy deliveries begin, except contracts between IOUs and their affiliates, which are public.

¹² See, Pacific Gas and Electric Company’s (U 39-E) Provisional Closing Report for California Renewables Portfolio Standard 20% Program, “Provisional RPS 20% Closing Report: Accounting,” August 20, 2012, p. 4 (showing on line 10 that PG&E attained a 15.9% RPS in 2010).

¹³ See, Pacific Gas and Electric Company’s (U 39-E) 2012 Renewable Energy Procurement Plan, Appendix 1: Quantitative Information, “Current Expected Need Scenario” (May 23, 2012)

The confidential appendices, marked "[REDACTED]" in the public copy of this resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments on July 24, 2012.

Timely comments were filed on August 14, 2012, by Sierra Pacific Industries (SPI); TransAlta Corporation (TransAlta); the Independent Energy Producers Association (IEP); Pacific Gas and Electric Company (PG&E); the Division of Ratepayer Advocates (DRA); The Utility Reform Network (TURN); and Public Utility District No. 1 of Snohomish County, Washington and Public Utility District No. 1 of Chelan County (collectively, the PUDs). The PUDs are represented in their filed comments by the same attorneys and, while filing separate comments, the substance of those comments are identical to each other and thus will be addressed below as the same.

As a result of the number of comments filed and the number of issues raised by parties, the comments are addressed collectively below by the issues raised, rather than addressing each party's comments individually.

Timing of the regulatory approval process

The PUDs,¹⁴ SPI,¹⁵ and IEP¹⁶ contend in their comments that there has been an unreasonable time delay between the time that these agreements were originally

¹⁴ PUD Comments, "Section III., B.," Comments filed to Draft Resolution E-4520, August 14, 2012, p. 1.

¹⁵ SPI Comments, "Section III.," Comments filed to Draft Resolution E-4520, August 14, 2012, p. 3.

¹⁶ IEP Comments, Comments filed to Draft Resolution E-4520, August 14, 2012, p. 1.

negotiated with PG&E and Energy Division's issuance of a draft resolution to dispose of these REC Agreements. The Commission notes that a number of factors affected the timing of Energy Division's review of these agreements, and others.

The Commission notes, for instance, that the Barclays Agreements were initially filed with the Commission during that time that REC policies were being developed and prior to the adoption of D.10-03-021.¹⁷ Further, as SPI acknowledges in its comments,¹⁸ Commission review of REC Agreements was then delayed when D.10-05-018¹⁹ imposed a stay of D.10-03-021 shortly after it had been issued. D.11-01-025 lifted that stay, and allowed the Commission to begin review of REC Agreements for RPS compliance purposes, in January 2011.²⁰

Additionally, the Commission notes that shortly after D.11-01-025 lifted the stay and allowed for Commission review of REC agreements, SB 2 (1X) was signed into law on April 12, 2011.²¹ SB 2 (1X) significantly changed the regulatory landscape, requiring retail sellers to procure RPS-eligible resources equivalent to an average of 20% of retail sales for 2011-2013 ("Compliance Period 1" or "CP1"); 25% of retail sales by the end of 2016 ("CP2"); and 33% of retail sales by 2020 ("CP3") and for each year thereafter.

Pre-2011 RPS compliance need

Two of the four REC Agreements addressed by this resolution – both of the Barclays Agreements – involve some RECs associated with renewable energy generated before January 1, 2011. The PUDs are parties to the Barclays

¹⁷ See, http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/115056.pdf (authorizing the use of RECs for RPS compliance purposes).

¹⁸ SPI Comments, "Section II.," p. 2.

¹⁹ See, http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/117847.pdf ("Stay of the TREC Decision")

²⁰ See, http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/129517.pdf ("Lifting the Stay")

²¹ See, http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0001-0050/sbx1_2_bill_20110412_chaptered.pdf (SB 2 (1X))

Agreements and filed comments regarding the evaluation of PG&E's need for RECs for pre-2011 RPS compliance in Draft Resolution E-4520.

The PUDs contend that "whether PG&E attained a 14 percent RPS procurement by 2010 is not dispositive of the proper treatment of the [Barclay Agreements] for deliveries prior to January 1, 2011."²² The PUDs argue that while SB 2 (1X) created a 14% safe harbor threshold, that statute did not change the 20% procurement target for 2010.²³

The Commission agrees that SB 2 (1X) did not change the RPS *target* of 20% by the end of 2010. However, SB 2 (1X) did impact retail sellers' compliance obligations for years prior to 2011 if certain conditions were met. In D.12-06-038, the Commission implemented compliance rules established in SB 2 (1X), including Section 399.15(a), which allows a waiver of any deficits associated with an RPS compliance requirement for years prior to 2011 if the retail seller procured 14% of its retail sales from eligible renewable energy resources in 2010.²⁴ PG&E acknowledges in its comments to Draft Resolution E-4520 that it expects to demonstrate that it procured 14% of its 2010 retail sales from RPS eligible resources allowing it to access the compliance waiver (or safe harbor) provision.²⁵ Further evidence of this was provided by on August 20, 2012 when PG&E filed its Provisional Closing Report, showing that it attained a 15.9% RPS in 2010.²⁶ As a result, and as stated in Draft Resolution E-4520, PG&E does not need RECs associated with pre-2011 generation for compliance purposes.²⁷

Grandfathering and "count in full"

²² PUD Comments, "Section III., A.," p. 2.

²³ *Id.*

²⁴ D.12-06-038, Ordering Paragraph 10, p. 97.

²⁵ PG&E Comments, "Section III., B.," p. 3.

²⁶ Pacific Gas and Electric Company's (U 39-E) Provisional Closing Report for California Renewables Portfolio Standard 20% Program, "Provisional RPS 20% Closing Report: Accounting," August 20, 2012, p. 4.

²⁷ Draft Resolution E-4520, p. 14.

The Commission agrees with the comments of PG&E,²⁸ SPI,²⁹ TransAlta,³⁰ IEP,³¹ and the PUDs³² on the issue of whether these REC Agreements have been “grandfathered” and thus are eligible to “count in full.” To this point, the Draft Resolution clearly noted that any REC agreements executed *before* June 1, 2010 for RECs associated with renewable energy generated *after* January 1, 2011, pursuant to D.12-06-038, would be eligible to “count in full” for RPS compliance obligations.³³

PG&E,³⁴ SPI,³⁵ and IEP,³⁶ however, erroneously contend that Draft Resolution E-4520 failed to acknowledge this reality. These comments are patently false. Draft Resolution E-4520 explicitly noted that these specific RECs may “count in full”:

*“The remaining RECs procured pursuant to the Barclays Agreements, in addition to the RECs procured pursuant to the SPI and TransAlta Agreements, would be generated after January 1, 2011 **and thus could ‘count in full’ toward PG&E’s RPS compliance obligations.**”³⁷*

While D.12-06-038, implementing SB 2 (1X), did find that RECs procured from contracts executed prior to June 1, 2010 *may* “count in full,” that decision did not

²⁸ PG&E Comments, “Section III., C.,” Comments filed to Draft Resolution E-4520, August 14, 2012, p. 4.

²⁹ SPI, “Section III.,” p. 3-4.

³⁰ TransAlta Corporation, “Section III., B.,” Comments filed to Draft Resolution E-4520, August 14, 2012, p. 5.

³¹ IEP, p. 2.

³² PUD Comments, “Section III., B.,” p. 3-4.

³³ Draft Resolution E-4520, “Table 2. Summary of Application of Commission Rules to REC Agreements,” p. 13.

³⁴ PG&E Comments, “Section III., C.,” p. 4.

³⁵ SPI Comments, “Section III.,” p. 3.

³⁶ IEP Comments, p. 2.

³⁷ *Id* at p. 14. (emphasis added)

pre-judge whether or not specific REC Agreements warranted Commission approval.

SB 2 (1X) compliance need

IEP,³⁸ TransAlta,³⁹ and SPI⁴⁰ filed comments alleging that Draft Resolution E-4520 erred by finding that PG&E lacks a short-term compliance need pursuant to SB 2 (1X). IEP, for instance, stated in its comments that the draft resolution relied on the assumption that all resources that “PG&E has projected to use for compliance in the first and second RPS compliance periods will in fact be available and deliverable at that time . . .”⁴¹ This statement is incorrect. As the draft resolution stated, the Commission evaluated PG&E’s self-reported risk-adjusted need for these REC Agreements, rather than assuming one hundred percent project success.⁴²

SPI contends in its comments that PG&E “apparently disagrees with the Draft Resolution’s conclusion [that PG&E lacks short-term compliance need] as PG&E continues to seek approval” of these REC Agreements.⁴³

In PG&E’s comments to the draft resolution, however, the utility acknowledged that its RPS compliance need has changed, primarily as a result of passage of SB 2 (1X), since the execution of the REC Agreements in 2009-10.⁴⁴ According to PG&E, the end result of these changes was to “effectively reduce PG&E’s immediate RPS compliance need.”⁴⁵ As a result, PG&E appears to explicitly agree with the conclusion of the draft resolution on the issue of need: “PG&E

³⁸ IEP Comments, p. 2.

³⁹ TransAlta Comments, “Section B.,” p. 5.

⁴⁰ SPI Comments, “Section III.,” p. 3.

⁴¹ IEP Comments, p. 2.

⁴² Draft Resolution E-4520, “Demonstration of Need for the REC Agreements,” p. 14.

⁴³ SPI Comments, “Section III.,” p. 3.

⁴⁴ PG&E Comments, “Section III., B.,” p. 3.

⁴⁵ *Id.*

does not dispute that it will probably not need the RECs from these agreements to meet the current near-term RPS compliance requirements . . .”⁴⁶

TURN⁴⁷ and DRA⁴⁸ filed comments in support of the draft resolution’s conclusion that PG&E lacks a near-term compliance need for these REC Agreements. DRA notes in its comments that PG&E revealed its estimated RPS Net Short position in a public presentation at the Commission on June 12, 2012.⁴⁹ According to DRA, that presentation showed PG&E lacks a need for renewable generation, on a risk-adjusted basis until 2017.⁵⁰

Value to ratepayers

Draft Resolution E-4520 did not assess the cost reasonableness of these REC Agreements because such an evaluation was considered unnecessary given the utility’s demonstrated lack of need for these agreements in the first place. That said, a number of parties filed comments in an effort to highlight the purported cost reasonableness of these REC Agreements to ratepayers.

SPI,⁵¹ IEP,⁵² and TransAlta⁵³ suggest that these REC Agreements are highly valuable to ratepayers. However, the comments filed by the PUDs suggest otherwise:

“The renewable attribute prices in 2009 [at, or around, the time that all of these REC Agreements were originally negotiated] were significantly higher than they are now -- \$30-\$43 vs. \$2-\$4 per REC.”⁵⁴

⁴⁶ PG&E Comments, “Section III., C.,” p. 4.

⁴⁷ TURN Comments, Comments filed to Draft Resolution E-4520, August 14, 2012, p. 1.

⁴⁸ DRA Comments, “Position and Recommendation,” Comments filed to Draft Resolution E-4520, August 14, 2012, p. 2.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ SPI Comments, “Section III.,” p. 3-4.

⁵² IEP Comments, p. 2-3.

⁵³ TransAlta Comments, “Section II., B.,” p. 5.

That is, according to the comments filed by the PUDs, REC prices now are approximately ten times less than the prices of RECs negotiated in 2009. TURN, a member of PG&E's Procurement Review Group, filed comments that are consistent with those filed by the PUDs on the issue of price. TURN stated its belief "that the prices specified in these contracts are not competitive with current offerings available to PG&E."⁵⁵ TURN concluded that "approving these advice letters would simply squander ratepayer money" and would not produce "any . . . ratepayer benefits."⁵⁶

Furthermore, SPI argued in its comments that its RECs, because they are eligible to "count in full," have "no market substitute" and thus the Commission cannot compare their value to other compliance products.⁵⁷ The Commission disagrees with this statement. While acknowledging that unbundled RECs associated with generation from contracts executed before June 1, 2010 perhaps have a unique compliance value, the Commission notes that these agreements represent only one type of product that may be used by PG&E to meet its future RPS compliance obligations. As a result, the value of these REC Agreements can be compared to the value of other RPS compliance products. PG&E has demonstrated that it lacks an immediate near-term RPS compliance need. PG&E will have sufficient opportunities to procure cost-effective RPS products (including bundled energy products, or more cost effective short-term unbundled RECs) to meet its future compliance obligations as they arise.

Additionally, the Commission notes that TransAlta misquoted Draft Resolution E-4520 when it alleged that the draft resolution found the TransAlta RECs to be "reasonably priced."⁵⁸ Draft Resolution E-4520 made no such finding.

Confidential Information

⁵⁴ PUD Comments, "Section III., C.," p. 5.

⁵⁵ TURN Comments, p. 1.

⁵⁶ *Id.*

⁵⁷ SPI Comments, "Section III.," p. 4.

⁵⁸ TransAlta Comments, "Section II.," p. 3.

TransAlta⁵⁹ and the PUDs⁶⁰ note that the Draft Resolution relies heavily on confidential information regarding PG&E's demonstrated RPS compliance need as the basis for proposing rejection of these contracts. The Commission acknowledges that Draft Resolution E-4520 relied heavily on information protected by the confidentiality rules pursuant to D.06-06-066.

The Commission also notes that PG&E itself publicly acknowledged in its comments, as referenced above, that the utility "will probably not need the RECs from these agreements to meet the current near-term RPS compliance requirements."⁶¹ Furthermore, in its comments, DRA references a presentation that PG&E made in public at the Commission on June 12, 2012, and that is currently published on the Commission's website, that reinforces the conclusion that PG&E lacks near-term RPS compliance need.⁶²

That said, the PUDs contend that they have "a right to see the confidential information."⁶³ Pursuant to D.08-04-023,⁶⁴ any third party seeking access to confidential information from a formal Commission proceeding must meet with the party claiming confidential treatment pursuant to D.06-06-066 and confer to resolve the request informally consistent with Rule 11.3 of the Commission's Rules of Practice and Procedure.⁶⁵

⁵⁹ TransAlta Comments, "Section II.," p. 4.

⁶⁰ PUD Comments, "Section III., D.," p. 5.

⁶¹ PG&E Comments, "Section III., C.," p. 4.

⁶² DRA Comments, "Position and Recommendation," p 2.

⁶³ PUD Comments, "Section III., D.," p. 5.

⁶⁴ See, D.08-04-023, p. 22-23.

⁶⁵ The Commission's Rules of Practice and Procedure, Article 11, Rule 11.3, p. 63. Available online here: http://docs.cpuc.ca.gov/WORD_PDF/AGENDA_DECISION/143256.PDF

FINDINGS AND CONCLUSIONS

1. The agreements with Barclays Bank, Plc; Sierra Pacific Industries; and TransAlta Corporation qualify as REC-only contracts as defined by D.10-03-021, as modified by D.11-01-025.
2. SB 2 (1X) imposed significant changes on the RPS Program, including setting new RPS compliance targets through 2020.
3. DRA's protests, based on various grounds, seeking rejection of PG&E's AL 3600-E, AL 3600-E-A, and AL 3632-E are denied.
4. This resolution does not address whether PG&E was authorized to accept pre-deliveries of energy pursuant to these agreements, nor does it prejudge whether or not PG&E may successfully seek cost recovery for these energy deliveries pursuant to other Commission orders.
5. The REC Agreements are consistent with the bilateral contracting guidelines established in D.06-10-019 and D.09-06-050.
6. PG&E adequately examined the reasonableness of the REC Agreements utilizing its LCBF methodology during the time the agreements were being negotiated and executed.
7. PG&E does not have a need to procure RECs associated with pre-2011 generation.
8. The near-term nature of these REC Agreements is inconsistent with PG&E's demonstrated compliance need through the first and second compliance periods.
9. The REC Agreements include the Commission-adopted RPS "non-modifiable" standard terms and conditions, as set forth in D.08-04-009, D.08-08-028, and D.10-03-021, as modified by D.11-01-025.
10. The confidential appendices, marked "[REDACTED]" in the public copy of this resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.
11. PG&E, DRA, TURN, SPI, TransAlta, IEP, and the Public Utility Districts of Snohomish and Chelan Counties filed timely comments to Draft Resolution E-4520 on August 14, 2012. This resolution disposes of these comments.
12. The REC Agreements considered herein were pending approval before the Commission during the time that policies were being developed to address

the use of RECs for RPS compliance purposes and during the time that SB 2 (1X) was signed into law.

13. Advice Letter 3600-E, and Supplemental Advice Letters 3600-E-A and 3600-E-B, should be denied.
14. Advice Letter 3632-E, and Supplemental Advice Letters 3632-E-A and 3632-E-B, should be denied.
15. Advice Letter 3854-E should be denied.
16. Advice Letter 3862-E should be denied.

THEREFORE IT IS ORDERED THAT:

1. Pacific Gas and Electric Company's contract with Barclays Bank, Plc filed in Advice Letter 3600-E, and Supplemental Advice Letters 3600-E-A and 3600-E-B, is denied.
2. Pacific Gas and Electric Company's contract with Barclays Bank, Plc filed in Advice Letter 3632-E, and Supplemental Advice Letters 3632-E-A and 3632-E-B, is denied.
3. Pacific Gas and Electric Company's purchase and sale agreement with Sierra Pacific Industries filed in Advice Letter 3854-E is denied.
4. Pacific Gas and Electric Company's purchase and sale agreement with TransAlta Corporation filed in Advice Letter 3862-E is denied.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on September 27, 2012; the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

Confidential Appendix A

Pacific Gas & Electric's RPS Energy Forecast

[REDACTED]

Confidential Appendix B

Summary of Barclays' Hay Canyon Contract Terms and Conditions

[REDACTED]

Confidential Appendix C

Summary of Barclays' Nine Canyon Contract Terms and Conditions

[REDACTED]

Confidential Appendix D

Summary of Contract Terms and Conditions with
SPI's Anderson, Lincoln, Quincy, and Burney

[REDACTED]

Confidential Appendix E

Summary of TransAlta's Summerview 2 Contract Terms and Conditions

[REDACTED]